SENATE BILL No. 538

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-29.5.

Synopsis: Utility regulatory commission oversight of telecommunications. Establishes remedies, including civil penalties for second or subsequent violations, for noncompetitive behavior by telecommunications companies.

Effective: July 1, 2003.

Gard

January 23, 2003, read first time and referred to Committee on Utility and Regulatory Affairs.

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 538

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 8-1-29.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 29.5. Enforcement Remedies for Prohibited Actions by Telecommunications Companies

Sec. 1. For purposes of this chapter, "account" refers to the commission public utility fund account established under IC 8-1-6.

Sec. 2. For purposes of this chapter, "customer" means a person, business organization, or other entity that:

(1) requests and obtains telecommunications service; and

(2) is responsible for the payment of charges relating to the telecommunications service.

The term includes a person or entity whose service has been temporarily disconnected.

Sec. 3. For purposes of this chapter, "telecommunications company" means any natural person, firm, association, corporation, or partnership that has been granted a certificate of

territorial authority by the commission to provide telecommunications service (as defined in IC 8-1-29-4) within Indiana.

Sec. 4. (a) A telecommunications company may not knowingly impede the development of competition in a telecommunications service market.

(b) The commission shall determine whether an action by a telecommunications company impedes the development of competition in a telecommunications service market. The commission may conduct the review required by this section upon its own motion, a request of the office of the utility consumer counselor, or the filing of a complaint by:

(1) one (1) or more customers of the telecommunications company; or

(2) one (1) or more other telecommunications companies.

The commission shall conduct a review under this section on an expedited basis, and a complaint filed by another telecommunications company under this section that alleges a violation of an interconnection agreement or order is subject to the commission's expedited procedures under 170 IAC 7-7.

(c) The following acts by a telecommunications company are prima facie evidence of impeding the development of competition in a telecommunications service market:

(1) Unreasonably:

(A) refusing or delaying interconnections or collocation; or

(B) providing inferior connections;

to another telecommunications company.

(2) Unreasonably impairing the speed, quality, or efficiency of services used by another telecommunications company.

(3) Unreasonably delaying access in connecting another telecommunications company whose product or service requires novel or specialized access to the local exchange network.

(4) Unreasonably refusing or delaying access by a person to another telecommunications company.

(5) Unreasonably acting or failing to act in a manner that has a substantial adverse effect on the ability of another telecommunications company to provide service to its customers.

(6) Unreasonably failing to offer service to customers in a local exchange network in which another telecommunications company:

(A) is certified to provide services; and

(B) has entered into an interconnection agreement for the provision of local exchange telecommunications services;

with the intent to delay or impede the ability of the other provider of local exchange telecommunications services to provide telecommunications services.

(7) Violating the terms or unreasonably delaying implementation of an interconnection agreement entered into under Section 252 of the federal Telecommunications Act of 1996 (47 U.S.C. 252) in a manner that:

(A) unreasonably delays;

(B) increases the cost of; or

(C) impedes the availability of;

telecommunications services to customers.

(8) Violating a commission order regarding matters between telecommunications companies.

(9) Providing services or products in a manner that violates IC 8-1-2-103, IC 8-1-2-104, or IC 8-1-2-105.

(d) A telecommunications company shall not knowingly impede the development of competition in a telecommunications services market by:

(1) unreasonably:

(A) refusing access to or provision of;

(B) delaying access to or provision of; or

(C) providing inferior;

operation support systems to another telecommunications company;

(2) unreasonably failing to offer network elements that the commission or the Federal Communications Commission has determined must be offered on an unbundled basis to another telecommunications company;

(3) unreasonably refusing or delaying collocation with another telecommunications company; or

(4) unreasonably denying a request by another telecommunications company for nonproprietary information about a local exchange network's:

(A) technical design and features;

(B) geographic coverage;

(C) equipment design; or

(D) traffic capabilities.

(e) If a customer of a telecommunications company requests to change to another telecommunications provider, the

telecommunications company must transfer the customer to the other telecommunications provider not later than ten (10) days after receiving the notice of transfer. A violation of this subsection constitutes prima facie evidence of impeding competition under subsection (c). In addition to having the other rights and remedies available to customers under this chapter, the customer is not liable for any charges billed by the telecommunications company for services provided from the time of the expiration of the period prescribed in this subsection until the date the transfer is completed.

Sec. 5. After notice and hearing, the commission may impose any of the following remedies for a violation of section 4 of this chapter:

(1) Directing the violating telecommunications company to cease and desist from violating:

(A) this chapter;

(B) a commission order; or

(C) a commission rule.

(2) Mandating corrective action to alleviate the violation or noncompliance.

(3) Revoking or modifying the terms of:

(A) a certificate of territorial authority;

(B) a certificate of public convenience and necessity; or

(C) another permit;

issued to the telecommunications company by the commission.

Sec. 6. (a) After notice and hearing, the commission may impose the following civil penalties for a second or subsequent violation of section 4 of this chapter:

(1) For a telecommunications company with at least fifty thousand (50,000) subscriber access lines, the greater of:

(A) thirty thousand dollars ($30,000); or

(B) eight hundred twenty-five hundred-thousandths percent (0.00825%) of the telecommunications company's gross intrastate annual telecommunications revenue;

per violation.

(2) For a telecommunications company with less than fifty thousand (50,000) subscriber access lines, not more than two thousand dollars ($2,000) per violation.

(b) A second or subsequent violation of section 4 of this chapter for which the commission may impose a civil penalty under subsection (a) may involve:

(1) an act described in section 4(c) of this chapter; or

(2) an unreasonable action, refusal, delay, failure, or denial described in section 4(d) of this chapter;

that is different from the act, action, refusal, delay, failure, or denial that constituted the initial violation of section 4 of this chapter.

(c) A matter resolved through voluntary mediation is not considered a violation for purposes of this section.

(d) If the commission imposes a civil penalty under this section, the period for which the civil penalty is imposed begins on the day the telecommunications company first violated section 4 of this chapter and ends on the day the telecommunications company complies with a remedy imposed under section 5 of this chapter. Each day of the period is considered a separate violation for purposes of calculating a civil penalty under subsection (a).

(e) In imposing a civil penalty under this section, the commission may consider the following factors:

(1) The duration and gravity of the violation.

(2) The presence or absence of due diligence on the part of the violating telecommunications company to comply with or secure relief from:

(A) this chapter;

(B) a commission order; or

(C) a commission rule.

(3) Economic benefits accrued by the violating telecommunications company because of the delay in complying with this chapter or a commission rule or order.

(4) The amount of a civil penalty that will:

(A) deter future violations by the violating telecommunications company; and

(B) enhance voluntary compliance with this chapter or a commission rule or order.

(5) The size of the violating telecommunications company.

(6) Good faith of the violating telecommunications company in attempting to remedy the violation or to achieve compliance after receiving notification of the violation or noncompliance.

(f) If the commission waives a civil penalty under this section, the commission must make a written finding as to why it is waiving the civil penalty. The commission may waive a civil penalty under this section due to the following:

(1) Technological infeasibility.

(2) Act of God.

(3) Customer provided equipment.
(4) Negligent act of a customer.
(5) Emergency situation.
(6) Unavoidable casualty.

(g) A violating telecommunications company must pay a civil penalty imposed under this section not later than thirty (30) days after the date the commission imposes the civil penalty.

Sec. 7. (a) The secretary of the commission shall direct a civil penalty imposed and collected under section 6 of this chapter as follows:
(1) A civil penalty imposed for a violation that directly affects ratepayers must be refunded directly to the customers of the violating telecommunications company in the form of credits on customer bills.
(2) A civil penalty imposed for a violation that directly harms another telecommunications company must be awarded directly to the other telecommunications company.
(3) A civil penalty imposed for a violation not described in subdivision (1) or (2) must be deposited into the account.

(b) The commission shall use penalties deposited into the account under subsection (a)(3) for:
(1) consumer education;
(2) promotion of utility competition; or
(3) a purpose considered by the commission to further the public interest.
The commission shall annually provide to the regulatory flexibility committee established by IC 8-1-2.6-4 a report of the distribution of deposits under this subsection.

(c) A civil penalty deposited into the account may not be included in:
(1) the calculation of the difference between actual expenditures and appropriations described in IC 8-1-6-1(b); or
(2) a public utility fee credit.

Sec. 8. The commission shall award damages and costs to a telecommunications company that is directly harmed by another telecommunications company's violation of section 4 of this chapter. The commission may, after considering the factors set forth in section 6(e) of this chapter, award attorney's fees to the telecommunications company that is directly harmed by the violation. The violating telecommunications company shall pay the damages and costs, and any attorney's fees ordered by the

commission, not later than thirty (30) days after the commission awards the damages, costs, and attorney's fees, unless the commission or a court directs otherwise.

Sec. 9. (a) Not more than thirty (30) days after the entry of a commission order, if the violating telecommunications company has not complied with the order, the attorney general shall petition a court for enforcement of the commission order unless the commission order:

(1) directs otherwise; or

(2) is stayed by:

(A) the commission; or

(B) an appellate court.

Before ruling on a petition under this subsection, a court may award injunctive or equitable relief to enforce the commission order.

(b) A court that hears a petition under subsection (a) shall determine whether:

(1) the commission entered the order; and

(2) the violating telecommunications company has complied with the commission order.

For purposes of subdivision (1), a certified copy of the commission order constitutes prima facie evidence that the commission entered the order.

(c) If, after a hearing, a court determines that:

(1) the commission entered the order; and

(2) the violating telecommunications company has not complied with the commission order;

the court shall enter judgment ordering the violating telecommunications company to comply with the commission order.

(d) If a court enters judgment under subsection (c), the court shall award the petitioner any costs incurred in enforcing the commission's order.

(e) If a court finds that a violating telecommunications company has failed to pay damages, attorney's fees, or costs under section 8 of this chapter, the court shall order the violating telecommunications company to pay additional damages unless there is a reasonable basis for the violating telecommunications company's failure to pay the damages, attorney's fees, and costs. If a court finds that there is a reasonable basis for the violating telecommunications company's failure to pay damages, attorney's fees, and costs under section 8 of this chapter, the court may set a

new date by which the violating telecommunications company must pay the damages, attorney's fees, and costs.